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OFFICE OF PETITIONS

In re Application of :
Chen, et al. :
Application No.: 10/502,420 : ON PETITION
Filing Date: August 26, 2005 :
Attorney Docket No. **27763-705.831** :

This is a decision on the petition under 37 CFR 1.47 filed March 7, 2011, which will be treated as a petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.131.

The petition is **granted**.

The record reflects that the joint inventors named in subject application executed the declaration required by 37 CFR 1.63, and that the executed declaration was filed on August 26, 2005. Petitioner now files the instant petition under 37 CFR 1.47(a) because inventors Cho, Holley, Stewart, and Patel have either constructively refused to sign the declaration under 37 CFR 1.131 or cannot be located to execute the declaration under 37 CFR 1.131. Petitioner requests that the declaration under 37 CFR 1.131 be accepted without the signatures of inventors Cho, Holley, Stewart, and Patel.

It is noted that the provisions of 37 CFR 1.47 only apply to the execution of the original oath or declaration under 37 CFR 1.63. A petition under 37 CFR 1.47 is not appropriate in this case because the joint inventors executed the original declaration. Relief can be granted, pursuant to 37 CFR 1.183, by the waiver or suspension of the requirements of 37 CFR 1.131 as to inventors Cho, Holley, Stewart, and Patel.

37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule which is not a requirement of the statute, where justice requires such waiver, and applicant has requested a waiver of the requirement that the 37 CFR 1.131(b)(1) declaration be signed by all the joint inventors.

The instant petition is accompanied by an appropriate showing that inventors Cho, Holley, Stewart, and Patel have constructively refused to execute the declaration under 37 CFR 1.131 or cannot be located to do the same. Accordingly, the declaration of March 7, 2011, signed by inventors Schneider, Felciano, Richards, Selvarajan, and Cehn, will be accepted as though it was signed all joint inventors as required by 37 CFR 1.131.

The fee for the petition under 37 CFR 1.183 is \$400.00 as per 37 CFR 1.183 and 1.17(f). The amount of \$130.00 paid March 7, 2011, is noted. Deposit account 23-2415 will be charged an additional \$270.00, accordingly.

The application file will be forwarded to Technology Center 2100, GAU 1631 for further processing.

Telephone inquiries regarding this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
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Office of Petitions